IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Income Tax Appeal No.175 of 2004

Ensco Maritime Ltd.
(earlier known as Dual Offshore Ltd.)
As agent of Mr. Klabat Pelenkahu,
C/o Nangia & Company,
Chartered Accountants,
75/7 Rajpur Road, Dehraudn ……..… Appellant

Versus

The Commissioner of Income
Tax, Dehradun ……Respondent

Hon'ble M.M. Ghildiyal, J.
Hon'ble B. S. Verma, J.:

Heard Sri Udyog Shukla, learned counsel for the appellant and Sri S.K. Posti, learned standing counsel for respondent.

Appellant has preferred this appeal under Section 260 A of the Income Tax Act against the order passed by Income Tax Appellate Tribunal, New Delhi dated 26.07.2004 rejecting the claim in respect of exemption from double taxation of the appellant for the assessment year 1997 – 98 and holding that off period salary is liable to be taxed in India.

Two questions have risen for decision, which are as under:

Whether on the facts and circumstances of the case the Tribunal erred in law holding that the exemption under Article 15 of DTAA between India and Indonesia was not available to the appellant technician?

Whether on the facts and circumstances of the case the Tribunal erred in law for holding off period salary received by the appellant technician liable to tax in India in terms of Section 19 (1) (2) of the Income Tax Act?

The question no. 1 has already settled by this court in Income Tax Appeal No. 165 of 2001 (Sedco Forex International Inc. Vs. The Commissioner of Income Tax, Dehradun and another) and court answered the question in negative i.e. in favour of the Department and against the appellant. The second question has been decided by Hon'ble Apex Court reported in JT 2005 (9) SC 639 (Sedco Forex International Drill Inc. and others Vs. Commissioner of Income Tax, Dehradun and Anr.) as such, the answer is in favour of assessee / appellant and against the department.

Following the above mentioned judgments, the question are decided accordingly.

In view of the above, the appeal is disposed of. No order as to costs.

(B.S. Verma, J) **(M.M. Ghildiyal, J.)**

December 19, 2005
SKSharma